

1 But obviously, the action there on the settlement
2 would influence T.D.S.'s conduct in this proceeding. The
3 Bureau would remain the investigator of the truth of falseness
4 of the issues that have been designated in this proceeding.

5 JUDGE CHACHKIN: Is this what the Commission is
6 talking about? There's no reference, as I recall, in the
7 Designation Order to a formal Petition to Deny.

8 MR. NAFTALIN: That's correct.

9 MR. FELDSTEIN: That's correct. Again, it is a
10 separate proceeding.

11 MR. GURMAN: Yeah, that's been -- action on that has
12 been held up, Your Honor, first during the court appeal and
13 then the remand and then the Hearing Designation Order.

14 JUDGE CHACHKIN: Well, obviously the transfer can't
15 go forward until Thompson's application is approved.

16 MR. FELDSTEIN: That's correct.

17 JUDGE CHACHKIN: So if they withdraw their Petition
18 to Deny --

19 MR. GURMAN: The Bureau has indicated that it will
20 act on that portion of the transfer proceeding.

21 JUDGE CHACHKIN: Is that the position of the Bureau?

22 MR. WEBER: Actually, I believe that's a slight
23 misstatement. The Bureau has indicated that we will -- after
24 we see the agreement in writing, the Bureau will make a
25 determination whether or not we feel comfortable with handling

1 the settlement agreement because the Bureau is a party to this
2 proceeding.

3 Even though the proceedings are separate, the Bureau
4 is -- may feel that it should be the Commission as opposed to
5 the Bureau which handles the settlement agreement and the
6 withdrawal of the transfer application, and if the Bureau does
7 feel uncomfortable with dealing with the settlement portion,
8 it will then refer the settlement to the Commission. However,
9 if the Bureau does feel comfortable with it, then that is a
10 correct statement.

11 JUDGE CHACHKIN: But that means then if you refer it
12 to the Commission, we could be in limbo for a year or more or
13 whatever -- how long the Commission takes.

14 MR. WEBER: Unfortunately, yeah, it could be six
15 months to a year, unfortunately.

16 MR. NAFTALIN: On the other hand, if the Bureau will
17 do it, it could be much quicker.

18 JUDGE CHACHKIN: It could if the Bureau does it.
19 But now I hear that the Bureau may be not willing to do so.

20 MR. NAFTALIN: What we're asking -- what we're
21 asking for is for thirty days plus then days for the Bureau to
22 look at this and decide whether they can decide they're going
23 to -- and for you to have a prehearing set schedule at that
24 time. If at that point -- if at that point it looks -- it
25 looks to you as though you should go forward with the case

1 anyway, obviously you're in control of the case.

2 MR. FREEDMAN: The Bureau has taken the very
3 reasonable position that they can't even act on whether or not
4 the settlement looks appropriate until they see it in writing.
5 It's the parties' hope that they can file it as expeditiously
6 as possible, the Bureau can make a determination that they
7 themselves, rather than the Commission, can act on it, and
8 they will give some ruling on it so that it won't hold up this
9 proceeding. But the only way that we can get this procedure
10 rolling is to get what we've requested, which is the forty-day
11 continuance, so that we can put the agreement in writing,
12 submit it to the Bureau, and then see where we stand at that
13 point.

14 JUDGE CHACHKIN: Well, why does it take thirty days
15 to put the agreement in writing if you've all agreed on
16 principle?

17 MR. FREEDMAN: It's our hope to do it sooner, but
18 you know, we understand what negotiations can be and we don't
19 want to have to keep coming back and nickel and diming you
20 with requests for more time.

21 MR. NAFTALIN: And we -- there are two sets of civil
22 litigation and some business matters in addition to get all of
23 the T's crossed and all the I's dotted for.

24 JUDGE CHACHKIN: Well, what I propose to do is I'll
25 give you these forty days, but I still intend to today

1 establish a procedural schedule which we'll go forward with.
2 There's no sense having a further conference then to establish
3 dates far into the future because I would like to try this
4 case, at least sometime in the near future, since the case is
5 going to have to be tried and it seems to me it's to the
6 benefit of everyone to get this case over with at some point.

7 So what I'm saying is -- suggesting -- what I'm
8 saying is that the dates that will be established will take
9 into consideration the fact that the parties will not be
10 required to continue their further discovery during these
11 forty days.

12 MR. NAFTALIN: And also Motions to Enlarge, Your
13 Honor.

14 JUDGE CHACHKIN: Well, what is the Bureau's position
15 on that?

16 MR. WEBER: We have no objection to delaying the
17 Motion to Enlarge date.

18 JUDGE CHACHKIN: All right. If the parties
19 -- none of the parties object, I'll permit it. So let's put
20 down in concrete terms what days we're talking about, the
21 thirty days. What do you have in mind as to the date at which
22 your agreement has to be submitted? Today is the 27th.

23 MR. FREEDMAN: Thirty days would be Monday, February
24 27th.

25 MR. NAFTALIN: February 27th.

1 JUDGE CHACHKIN: And then the Bureau wants ten days
2 to look at it and make some kind of a decision. Is that --

3 MR. WEBER: Yes, Your Honor. After ten days, I
4 believe we'll have enough time to review it and determine what
5 level of comfort we have in either handling the petition or
6 deciding to refer it to the Commission.

7 JUDGE CHACHKIN: And as I indicated, if it's
8 referred to the Commission, we're going to go ahead. We're
9 not going to wait until the Commission acts on this.

10 MR. FREEDMAN: I calculate ten days as being
11 Thursday, March 9th.

12 JUDGE CHACHKIN: All right. So when do you want to
13 file this Petition to Enlarge? How much time do you want if
14 you -- you'll get some kind of ruling by March 9th. Now, when
15 do you -- I want to set a date here by which you have to file
16 this petition to enlarge issues.

17 MR. NAFTALIN: Unless you extend it further, how
18 about a week after that?

19 JUDGE CHACHKIN: March 16th, all right. Now, where
20 do we stand right now in discovery? Have documents been
21 produced or no documents have been produced or what is the
22 situation?

23 MR. GURMAN: Documents have not been produced.
24 Thompson is ready, we're ready --

25 MR. FELDSTEIN: Today is our day to produce and we

1 have been prepared to produce documents today.

2 MR. GURMAN: But the thought was that in the
3 interest of a settlement here in the next thirty days, that a
4 moratorium on production would be a worthwhile thing to do.

5 JUDGE CHACHKIN: Well, what is the position of
6 Thompson? Are they prepared to produce, do they want to
7 produce, or what?

8 MR. FELDSTEIN: We were prepared to produce, but we
9 believe that if there is a moratorium on everyone producing,
10 then we ought to be included in the moratorium. We were -- it
11 only occurred -- we were the first ones as the days were
12 running.

13 JUDGE CHACHKIN: All right. It seems to me that the
14 thing to do is -- there's no reason that during this
15 intervening period, that the parties should not get the
16 documents together that they have to produce and that all the
17 parties produce at the same time the documents to each other.
18 Now, it would seem to me there's no reason those documents
19 should not be produced by March 16th at the latest.

20 MR. NAFTALIN: Your Honor, T.D.S. was -- a very --
21 two very comprehensive document requests were submitted to
22 T.D.S. which it considers to be -- virtually all of which to
23 be not appropriate. So can we have a schedule for that? We
24 will obviously take -- we will certainly advise the parties
25 about that, but it's -- they need a schedule or an order

1 requiring production, I believe.

2 JUDGE CHACHKIN: You're talking about in terms of --
3 well, as I understood, the parties had gotten together and had
4 agreed voluntarily to produce documents. Now, you're saying
5 that --

6 MR. NAFTALIN: That's correct.

7 JUDGE CHACHKIN: -- there's going to be some
8 objections to some of the requests. Is that what you're
9 saying?

10 MR. NAFTALIN: Basically -- I don't want to argue it
11 now at all.

12 JUDGE CHACHKIN: I understand that.

13 MR. NAFTALIN: That's correct. Our view is that
14 we're -- the issue is not about us, but about Thompson and
15 Amcell and therefore, the discovery request addressed to us
16 was far too broad and we haven't yet -- we've had our own
17 informal moratorium, so we've not discussed the details of
18 that with the other parties. I just want to make sure that
19 there's a schedule for that.

20 JUDGE CHACHKIN: Now, as I understand it, certain
21 requests have been made to you.

22 MR. NAFTALIN: Right.

23 JUDGE CHACHKIN: And you know specifically what
24 documents they want and you object to some of them.

25 MR. NAFTALIN: Yes.

1 JUDGE CHACHKIN: All right. Then on the date of
2 March 16th, the date that parties produce documents, if they
3 have any objections, on that date they will state their
4 objections specifically. And then what I propose is by March
5 23rd, responses to any objections, and then what I will do,
6 depending on the nature of the objections and the complexity
7 of the objections, I may very well have a conference shortly
8 after March 23rd and rule on the objections so we can move
9 forward. Now, in other words, this is going to eliminate the
10 Motion to Compel and all the rest. We'll just have the
11 objections and the response and then I'll rule on it.

12 MR. NAFTALIN: The objections will be addressed to
13 you then.

14 JUDGE CHACHKIN: Yes. I think this -- and if
15 anybody has any objection, they can state so, but I think this
16 will short-circuit -- short-cut it. All right, now, the only
17 thing then remaining is depositions.

18 Now, as far as deposition schedule is concerned, the
19 parties were talking about trading deposition of witness lists
20 by a certain date and I assume that was going to follow by
21 eight days, the way I see it, the time for Motion to Compel
22 and Production of Documents. So it would seem to me certainly
23 by -- what is April 1st?

24 MR. FREEDMAN: It's a Saturday, Your Honor.

25 JUDGE CHACHKIN: Make it then March 30th. The

1 parties can then trade deposition lists. While we're talking
2 about trading deposition lists, it would seem to me that the
3 parties should discuss informally who they want to depose, and
4 if they could reach agreement, fine. If they can't reach
5 agreement, then they should -- for those that the parties
6 don't want to -- have objections to, then they should file a
7 notice to take depositions by March 30th. And if there's
8 objection, of course I'll rule on it.

9 And then the parties, I notice here, want
10 approximately two months for the taking of depositions. Is
11 that -- is that amount of time necessary, sixty days, to take
12 depositions?

13 MR. SALPETER: People are scattered around the
14 country, Your Honor.

15 JUDGE CHACHKIN: Well, how many people are we
16 talking about here?

17 MR. HOFFMAN: Your Honor, if I may, I would suggest
18 that it's hard to answer those questions before the actual
19 document production takes place. My feeling is that once the
20 document exchange takes place, all the parties will be in a
21 position to, you know, really to know how many depositions are
22 going to be required and of whom.

23 JUDGE CHACHKIN: But I assume, judging by the one
24 issue, that we're not talking about a hundred depositions.
25 We're talking about --

1 MR. HOFFMAN: I would think --

2 JUDGE CHACHKIN: -- a small number of depositions,
3 ten or fifteen maximum.

4 MR. HOFFMAN: I would think -- I think that's right,
5 Your Honor.

6 JUDGE CHACHKIN: Maybe even less. So I'm just
7 wondering how much time we need. I propose, unless the
8 parties can demonstrate needing more time, 45 days for the
9 completion of discovery after the March 30th date. So I'm
10 talking about completion of discovery by May 15th. If the
11 parties can demonstrate to me that there is many more
12 depositions to be taken and certain conditions exist which
13 warrant extending it, but at least at this stage, I propose
14 May 15th as for the completion of discovery.

15 Then it would seem to me that -- I don't know how
16 long the parties think they need for preparation of their
17 exhibits to go into hearing. I would hope to go to hearing a
18 month after completion of discovery, unless the parties can
19 indicate to me they need more time than that. So I would
20 propose a hearing date -- well, let's say June 19th which is
21 more than a month. Does that -- anyone have any problem with
22 that date?

23 (No response.)

24 MR. NAFTALIN: You will not require a direct -- a
25 complete direct written case?

1 JUDGE CHACHKIN: What is the Bureau's position on
2 that? Under the -- it's not the Common Carrier Bureau
3 anymore.

4 MR. WEBER: We're now the Wireless Bureau, yes.
5 Well, Your Honor, we would actually seek your guidance on
6 this. The Designation Order did not put any burdens on the
7 Bureau, so whether we file a direct case or a rebuttal case,
8 that really would be up to you.

9 MR. NAFTALIN: Your Honor, we can produce the -- we
10 can meet the burden of going forward with a direct -- with a
11 written case. I don't really think that's the issue. But the
12 burden of going for-- the burden of proof is elsewhere.

13 JUDGE CHACHKIN: You don't even have the burden of
14 going forward actually. You have the burden of proceeding
15 with the initial presentation of evidence.

16 MR. NAFTALIN: That's correct.

17 JUDGE CHACHKIN: What I propose is a written direct
18 case, it seems to me makes more sense in this type of case,
19 and May 29th, exchange of written direct cases.

20 MR. FREEDMAN: Your Honor, I think that's Memorial
21 Day.

22 JUDGE CHACHKIN: Oh, is it? We don't want to do
23 that.

24 MR. STOLL: Your Honor, also -- I'm Robert Stoll. I
25 represent Mr. Thompson and his company in Portland. And two

1 weeks after the discovery is completed may be a little tough
2 to get -- to try to have transcripts and submit a written
3 direct case. I don't know about everybody else, but I think
4 it's going to be tough, particularly with the telescoping.
5 It's not enough time for the depositions --

6 JUDGE CHACHKIN: We'll make it June 5th for exchange
7 of direct cases.

8 MR. FREEDMAN: And you propose all parties to file
9 direct cases?

10 JUDGE CHACHKIN: The Bureau -- I would think it
11 probably would expedite things if all parties their direct
12 cases. It would seem to me, since we're going to have
13 extensive discovery, that there wouldn't be any surprises
14 which would require the Bureau to put in a rebuttal case.
15 However, if there are surprises at the time of the hearing,
16 the Bureau can put in a rebuttal case as well. Hopefully the
17 rebuttal case will be done. My intention is to have the
18 rebuttal case done immediately after the completion of the
19 direct case and there's no requirement that it be in writing,
20 as far as the rebuttal case goes. It can be oral witnesses.
21 Because what we're talking about here is a real party in
22 interest issue, so I -- in fact, all of this could be done
23 orally depending on the wishes of the parties or -- although I
24 think it probably makes sense to have a written direct case
25 and the parties can conduct cross examination. So yes, I

1 | would say it would seem to me, unless there's objection by any
2 | of the parties and the Bureau, that all the parties should
3 | exchange their written direct cases on June 5th, and I would
4 | also propose June 12th that there be notifications of
5 | witnesses for cross examination. And as I say, we'll start
6 | the hearing on June 19th.

7 | MR. NAFTALIN: Do you want an admissions session?

8 | JUDGE CHACHKIN: Pardon me?

9 | MR. NAFTALIN: Do you want an exhibit admissions
10 | session?

11 | JUDGE CHACHKIN: You know, if the issues were varied
12 | and if questions existed that seemed to me -- which would save
13 | time, but I don't know with this one issue, whether or not
14 | it's going to be useful to have an admissions session, unless
15 | the parties feel that somehow it's going to be useful. I
16 | don't think there's going to be that many -- a need to rule on
17 | relevancy considering the type of issue we have here.

18 | MR. FREEDMAN: Your Honor, do we need a deadline for
19 | the submission of objections to witness cross examination
20 | requests?

21 | JUDGE CHACHKIN: Well, what I propose to do, as far
22 | as June 12th is the notification of witnesses for cross
23 | examination, since the hearing is going to start on the 19th,
24 | I would propose that any objections -- by June 14th, the
25 | objections -- written objections by June 14th, and I would

1 propose to rule on it by the 16th, and if necessary, I'll call
2 a conference and rule on it.

3 And objections -- well, let me -- as far as exhibits
4 are concerned, exhibits should be hand-delivered, hand-served
5 on the parties and myself.

6 As far as notification of witnesses for cross
7 examination, I would propose that the parties orally inform
8 each other or if not, FAX the list to each of the parties and
9 myself as the witnesses you want for cross examination.
10 Similarly with objections. That should be hand-served or
11 FAXed. So it'll be that day.

12 And depending on the nature and who is objected to,
13 I'll either hold a conference or conference call, whatever can
14 be done more expeditious in handling it. Anything else the
15 parties want to discuss at this time?

16 MR. WEBER: Not meaning to backtrack, but without an
17 admissions session, the Bureau certainly has no objection to
18 admitting the documents as we go on with the hearing. The
19 Bureau would just like a chance though to be able to object to
20 the admission of any documents while we're proceeding.

21 JUDGE CHACHKIN: Oh, no question about it. When the
22 -- when the exhibits are offered or tendered and the party
23 marks it for identification and offers it in evidence, then,
24 of course, all the parties will be able to object on grounds
25 of relevance. Oh, no question about that. You certainly have

1 the right to object.

2 It just doesn't seem to me that there's going to be
3 that extensive a number of documents. Now, of course, I could
4 be wrong and we could be spending all kinds of time if there
5 is. If parties think that's the case, we can hold an
6 admissions session. But I don't know. Considering the nature
7 of the issue, I don't know if we need it.

8 But certainly, obviously, there will be rulings on
9 it and -- now, I may get the exhibits and find that they're
10 stacked up to the ceiling and may feel it may benefit an
11 admissions session, and if that's the case, then the first
12 order of business then, prior to the taking of oral testimony,
13 would be the admissions session. I'd rule on -- I'd rule on
14 the exhibits before we'd take oral testimony.

15 So in other words, we will start the hearing on June
16 19th and depending on the nature and the parties -- I'll let
17 the parties know long before so that they have a chance to
18 see. Either that day will be the date that we have an
19 admissions session in which we go through all the exhibits or
20 we will start the hearing and take -- each party will present
21 its exhibits and we'll rule on it as the exhibits are
22 presented per witness.

23 But I'll let the parties know certainly long before
24 the hearing date, since the exhibits are going to be exchanged
25 on June 5th, certainly I'll let the parties know in a week or

1 so if I feel I'm going to proceed with an admissions session
2 as the first order of business. Anything else the parties
3 want to discuss, the nature of the issue or anything?

4 MR. STOLL: Your Honor, do you contemplate that the
5 hearing would go continuous? I understand that sometimes
6 these hearings are recessed, you know, go for a couple days
7 and then there's a recess or something.

8 JUDGE CHACHKIN: Why would there be a recess after a
9 couple of days?

10 MR. STOLL: I don't know. I hope not.

11 JUDGE CHACHKIN: Barring a national emergency, I
12 would expect we would finish the hearing. Do I have to
13 summarize this again? Has everybody got the dates that we're
14 talking about here? Let me just briefly state it for the
15 record.

16 March 16th is the date for production of documents
17 as well as the filing of any -- well, we could start with --
18 February 27th is the date that the agreement is going to be
19 completed and presented to the Bureau.

20 By March 9th, the Bureau will express its views and
21 it can do so orally or in writing, depending on the Bureau
22 position. I mean, there's nothing for me to rule on, as far
23 as I can see.

24 March 16th will be the date for production of
25 documents as well as the filing of any petitions to enlarge

1 | issues. By March 16th, objections to production of documents
2 | will be filed.

3 | And by March 23rd, any response to any objections
4 | and then as I indicated, it's my intention to either hold a
5 | conference or if the objections are not that many, to possibly
6 | rule in writing.

7 | March 30th is the date for the notice to take
8 | depositions with the understanding that prior to that date,
9 | the parties will get together and hopefully agree on the
10 | witnesses to be deposed, and the March 30th date will be for
11 | those for which agreements cannot be reached and it's
12 | necessary for me to make a ruling.

13 | May 15th is the date for completion of discovery.
14 | On June 5th -- on June 5th, the parties will exchange their
15 | written direct cases and as I indicated, it will be hand-
16 | served. By -- on June 12th, parties will notify the other
17 | parties of the witnesses they want for cross examination, and
18 | this could either be hand-served or FAXed.

19 | June 14th, any objections to the witness
20 | notification, and that could also be hand-served or FAXed, and
21 | the hearing date is June 19, 1995 at 10 a.m. in the
22 | Commission's Washington, D.C. offices. Anything else?

23 |
24 |
25 |

1 MR. FREEDMAN: We have nothing, Your Honor.

2 JUDGE CHACHKIN: We're now in recess. Thank you.

3 (Whereupon, at 10:00 a.m. on Friday, January 27,
4 1995, the prehearing conference adjourned.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

ELLIS THOMPSON CORP.

Name

CC Docket No. 94-136

Docket No.

WASHINGTON, DC

Place

JANUARY 27, 1995

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 43, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARY KAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

1/27/95
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